

Application No. 09/698,640

### REMARKS

In the Office Action mailed August 24, 2005, the Examiner rejected pending claims 1-5. Claims 1 and 3-5 have been amended and claims 6-19 have been added. After entry of the foregoing amendments, claims 1-19 are pending in the application (2 independent, 19 total). No new matter has been added. Reconsideration is respectfully requested in light of the following Remarks.

#### A. Claim Rejections - 35 U.S.C. § 112

Claim 4 stands rejected as indefinite for use of the term "ghost pools." Applicant traverses. The term "ghost pools" is defined and various examples are provided in the specification. For example, "a 'fictional' auction takes place . . . merchants bid on 'ghost' pools containing a designated number of hypothetical customers. The winning bidder receives the rights, for example, to obtain the business of a previously agreed upon number of real customers who have previously applied, or in the future apply, for the applicable product." (page 21, lines 9-14). Further, a "ghost" pool may include "all customers signing up for the particular product or service during a certain time frame." (page 21, lines 12-13). Similarly, in a "ghost auction, results are deployed to past and future registrants falling within the appropriate pool or pools." (page 8, lines 24-25). Such future registrants may include "potential customers within the same pool" (page 14, line 25), or "a particular potential customer in a particular Characteristic Pool or Commitment Pool" (page 17, lines 6-9). Thus, Applicant asserts that "ghost pool," as defined in the specification, includes at least real and/or potential customers within a pool defined by other than the actual customer identity.

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Claim 4 is further rejected as indefinite for use of the term "hypothetical customer." Applicant has amended claim 4 to recite "potential customer," which term is more fully supported by the specification as set forth above.

**B. Claim Rejections - 35 U.S.C. § 102**

Claims 1-5 stand rejected under Section 102(e) as being anticipated by U.S. Pat. No. 6,415,270 ("Rackson"). Applicant respectfully traverses.

Rackson discloses, at most, an auction listing and bidding replication service where an individual item may be listed at or bid upon at various auctions with a single listing or bid placed with the auction replication service. Rackson addresses the dilemma faced by individuals seeking to maximize awareness of availability of a single product through multiple auctions, when the product may only be sold once. Rackson does not address the issue of "decreasing the merchants' customer acquisition costs" through grouping of customers or otherwise allowing merchants "to seek the business of numerous customers in one shot" through bidding of merchants on prearranged pools of customers. (Specification, page 16, line 31; page 32, line 24). The prior automatic arrangement of customers into a defined pool as the basis for a bidding process between merchants seeking to service the pool is not disclosed by Rackson.

Specifically, Rackson does not teach or suggest at least a method including "automatically grouping said plurality of customers into one or more pools prior to an auction in accordance with said selected Preferred Program Term, wherein said Preferred Program Term comprises indicia associated with said product; [and] receiving, over said network, bids from said one or more merchants in connection with providing said product collectively to said one or more pools of said plurality of customers" as recited in independent claim 1. (emphasis added).

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Applicant asserts that claim 1 is therefore patentable over the cited reference. Similarly, claims 2-5 depend from claim 1 and incorporate all of the limitations thereof, and are therefore patentable for the same reasons set forth with regard to claim 1, in addition to their own respective features.

With regards to claim 4 for example, simulating an auction or analyzing auction historic data, as suggested by the examiner, is in no way equivalent to offering merchants a present opportunity to bid on the opportunity to service potential customers as a group. Specifically, Rackson does not teach or suggest a method wherein "potential customers are grouped into ghost pools, and wherein said merchants bid on said ghost pools to obtain the right to provide a previously agreed upon number of said potential customers with said product" as recited in dependent claim 4. (emphasis added).

Accordingly, Applicants request withdrawal of the rejection of claims 1-5.

### C. New Claims

New claims 6-11 variously depend from claim 1 and contain all of the elements thereof. New independent claim 12 is patentable over the cited references because Rackson does not teach or disclose at least the claimed limitation of "grouping, prior to said bidding, a plurality of customers into a defined group according to established grouping criteria associated with said at least one of a product and service requested by said group of customers; [and] submitting for auction to a plurality of merchants said opportunity to provide said at least one of a product and service to said defined group of customers." New claims 13-19 depend from claim 12 and contain all of the elements thereof. Therefore, Applicant asserts that new claims 6-19 are

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differentiated from the cited references at least for the same reasons as set forth above, in addition to their own respective features.

**D. Art of Record Not Relied upon.**

U.S. Pat. No. 6,167,386 ("Brown") discloses, at best, a group of bidders who have voluntarily joined together to place a collective bid on a product offered by a merchant, which in no way teaches or suggests involuntary, automatic prearrangement of customers into a pool by a third party such that merchants may bid on the opportunity to provide a product to the pool of customers.

**E. Conclusion**

Applicant respectfully submits that the pending claims (19 total, 2 independent) are in condition for allowance. No new matter is added in this Reply. Reconsideration of the application is thus requested. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 19-2814. Applicant invites the Examiner to telephone the undersigned if the Examiner has any questions regarding this Response or the application in general.

Respectfully submitted,

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